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FINANCIAL INSTITUTIONS REGULATORY AND INTEREST RATE CONTROL ACT OF 1978.

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Mr. McIntyre and Mr. Brooke; Committee on Banking, Housing, and Urban Affairs, S15130.
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S. 3077—To amend and extend the Export-Import Bank Act of 1945, and for other purposes.
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H.R. 14279 (H. Res. 1439) (S. 3499).—Depository institutions, interest rates on deposits and accounts in, flexible regulation of, extend to Dec. 15, 1979. Committee discharged. Passed House Oct. 11, 1978. In Senate, referred to Banking, Finance and Urban Affairs Oct. 11, 1978. Committee discharged. Passed Senate amended Oct. 12 (*Legislative day of Oct. 11*), 1978. House agreed to Senate amendments with an amendment under suspension of the rules Oct. 15 (*Legislative day of Oct. 14*), 1978. Senate agreed to House amendment Oct. 15 (*Legislative day of Oct. 11*), 1978. Approved Nov. 10, 1978. Public Law 95–630.

H. Res. 1439 (H.R. 14279).—Depository institutions, interest rates on deposits and accounts in, flexible regulation of, extend to Dec. 15, 1978, agree to Senate amendments with amendments. Rules suspended. Passed House Oct. 15 (*Legislative day of Oct. 14*), 1978.

H.R. 13471 (H. Res. 1333) (S. 71) (See H.R. 14279).—Financial Institutions Regulatory Act of 1978. Reported from Banking, Finance and Urban Affairs July 20, 1978; Rept. 95–1383. Union Calendar------Union 753

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H.R. 13007 (H. Res. 1278).—Electronic Fund Transfer Act. Reported from Banking, Finance and Urban Affairs June 21, 1978; Rept. 95–1315. Union Calendar. Passed House Aug. 11, 1978. Ordered placed on the calendar Aug. 14 (*Legislative day of May 17*), 1978.

H. Res. 1278 (H.R. 13007).—Electronic Fund Transfer Act, consideration of. Reported from Rules July 19, 1978; Rept. 95–1378. House Calendar. Passed House Aug. 11, 1978.

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H.R. 12157 (H. Res. 1168) (S. 3077).—Export-Import Bank, 5-year extension of, increased financing commitment for and, provide. Reported from Banking, Finance and Urban Affairs May 4, 1978; Rept. 95–1115. Union Calendar. Passed House July 27, 1978. In Senate, ordered placed on the calendar July 28 (*Legislative day of May 17*), 1978.

H. Res. 1168 (H.R. 12157).—Export-Import Bank, 5-year extension of, increased financing commitment for and, provide, consideration of. Reported from Rules May 9, 1978; Rept. 95–1119. House Calendar. Passed House June 1, 1978.

S. 3499 (H.R. 14279).—Depository institutions, interest rates on deposits and accounts in, flexible regulation of, extend. Reported in Senate Oct 4 (*Legislative day of Sept. 28*), 1978; Banking, Housing, and Urban Affairs; Rept. 95–1273.

S. 3156.—Electronic fund transfer systems, consumer rights and safeguards in, provide. Reported in Senate May 26 (*Legislative day of May 17*), 1978; Banking, Housing, and Urban Affairs; Rept. 95–915. Ordered placed on the calendar May 26 (*Legislative day of May 17*), 1978.

S. 3077 (H.R. 12157).—Export-Import Bank Act Amendments of 1978. Reported in Senate May 15 (*Legislative day of Apr. 24*), 1978; Banking, Housing, and Urban Affairs; Rept. 95–844. Referred to Environment and Public Works May 23 (*Legislative day of May 17*), 1978. Reported July 26 (*Legislative day of May 17*), 1978; Rept. 95–1039.

S. 2055.—Consumers Financial Services Act of 1977. Reported in Senate Aug. 18 (*Legislative day of July 19*), 1977; Banking, Housing, and Urban Affairs Rept. 95–407.

S. 71 (H.R. 13471).—Financial Institutions Supervisory Act Amendments of 1977. Reported in Senate June 30 (*Legislative day of May 18*), 1977; Banking, Housing, and Urban Affairs; Rept. 95–323. Passed Senate Aug. 5 (*Legislative day of July 19*), 1977. In House, referred to Banking, Finance and Urban Affairs Sept. 7, 1977.

Senate Report

95-323

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Calendar No. 302

95TH CONGRESS
1st Session

SENATE

REPORT
No. 95-323

FINANCIAL INSTITUTIONS SUPERVISORY ACT AMENDMENTS OF 1977

REPORT

OF THE

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS UNITED STATES SENATE

TO ACCOMPANY

S. 71

JUNE 30 (legislative day, MAY 18), 1977.—Ordered to be printed

U.S. GOVERNMENT PRINTING OFFICE
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Calendar No. 302

95TH CONGRESS
1st Session

SENATE

REPORT
No. 95-323

FINANCIAL INSTITUTIONS SUPERVISORY ACT AMENDMENTS OF 1977

JUNE 30 (legislative day, MAY 18), 1977.—Ordered to be printed

Mr. PROXMIRE, from the Committee on Banking, Housing, and Urban Affairs, submitted the following

REPORT

[To accompany S. 71]

The Committee on Banking, Housing, and Urban Affairs to which was referred the bill (S. 71), to strengthen the supervisory authority of the Federal banking agencies over financial institutions and their affiliates, having considered the same, reports favorably thereon with an amendment to the text and an amendment to the title and recommends that the bill as amended do pass. The amendment incorporates into S. 71 the provisions of S. 73, S. 895, and S. 1433, considered concurrently with S. 71 by your committee.

COMMITTEE ACTION

S. 71 was first introduced in the 94th Congress at the request of Chairman Arthur F. Burns of the Federal Reserve System on September 9, 1975, on behalf of the three bank regulatory agencies, the Federal Reserve, the Comptroller of the Currency, and the Federal Deposit Insurance Corporation. The Federal Home Loan Bank Board, which regulates insured savings and loan associations, also requested that it be given the authority over institutions which it regulates recommended by the bank regulatory agencies. The Committee on Banking, Housing, and Urban Affairs held hearings in the 94th Congress on the proposed legislation and reported a bill (S. 2304) which was not considered on the Senate floor in the last session of the Congress due to the controversial nature of other unrelated banking measures which were pending in the Senate in the closing days of the last session.

S. 2304 was introduced in this Congress as S. 71. Chairman Burns stated in initially recommending the legislation that the proposed legislation was in response to regulatory concern over "problem bank" situations; and that the provisions of the recommended bill were designed to help prevent or correct such "problem bank" situa-

tions. The Federal Home Loan Bank Board expressed "strong support" for S. 71 and presented a case-by-case analysis of the weakness of the FHLBB's present supervisory authority.

S. 73 is another bill recommended by Chairman Arthur F. Burns and supported by the other financial regulatory agencies. In its 1975 annual report, the Federal Reserve recommended legislation prohibiting interlocking relationships among depository institutions. By letter dated September 28, 1976, Chairman Burns forwarded a specific legislative proposal to prohibit interlocking management and director relationships among all types of financial intermediaries. Chairman Burns stated that such a prohibition would have a salutory effect on competition between financial intermediaries: banks, savings and loan associations, mutual savings banks, and others. S. 73 was introduced as recommended by Chairman Burns.

S. 895 is a bill which was recommended by the Chairman of the Federal Deposit Insurance Corporation. In his transmittal letter dated February 18, 1977, to your committee, Chairman Barnett stated that the bill contained a number of technical "housekeeping" amendments to the Federal Deposit Insurance Act not designed to affect any changes of a controversial nature.

S. 1433 is a conflict-of-interest bill designed to close two loopholes in the law under which the heads of financial institutions regulatory agencies have been able to take jobs with institutions they formerly regulated before completing the terms of office for which they were appointed. The bill also raises the Levels of the Chairman and Members of the Federal Reserve, and the Chairman of the FDIC, FHLBB, Comptroller of the Currency, and Administrator of the National Credit Union Administration.

The committee held hearings on S. 71, S. 73, S. 895, and S. 1433 on May 24 and 25, 1977. Testimony on the bills was received from the affected regulatory bodies: the Federal Reserve Board, the Federal Deposit Insurance Corporation, the Comptroller of the Currency, the Federal Home Loan Bank Board, and the National Credit Union Administration. Testimony was also received from industries to be affected by the legislation: The American Bankers Association, the Independent Bankers Association, the U.S. League of Savings Association, the National Savings and Loan League, the National Association of Mutual Savings Banks, and the Credit Union National Association.

On June 15, 1977, the Committee on Banking, Housing, and Urban Affairs met in open executive session to consider S. 71, S. 73, S. 895, and S. 1433 as a group. The testimony on the bills had been favorable and the committee amended the bills to meet specific points raised at the hearings. The committee ordered the bills, as amended to be reported to the Senate on a composite basis as an amendment to S. 71.

SUMMARY OF THE LEGISLATION

S. 71 has four titles:

Title I contains the reported provisions of S. 71 providing the financial institutions regulatory agencies with greater and more specific authority to stop unsafe or unsound practices or violations of law.

Title II contains the reported provisions of S. 73 which prohibit with some exceptions interlocking management or director relationships among competing financial institutions.

Title III contains the reported provisions of S. 895, the FDIC "housekeeping" bill.

Title IV contains the reported provisions of S. 1433 which proscribes resolving door employment practices among the financial institutions regulatory agencies and the institutions they regulate.

A. Title I. Supervisory authority over depository institutions

The provisions of Title I provide the financial institutions regulatory agencies with authority to prevent problem situations from arising and with the authority to cure rapidly specific problem situations once they have arisen in five principal areas:

(1) Title I empowers the regulatory agencies to issue cease-and-desist orders under the Financial Institutions Supervisory Act of 1966 against individuals—directors, officers, employees, agents, or other persons participating in the conduct of the affairs of the institution—directly without the necessity for naming the corporate financial institution in the proceeding.

(2) Title I authorizes the imposition of civil money penalties of up to $1,000 per day against a financial institution or an individual for violating a final cease-and-desist order. Civil money penalties are also provided for violations of various laws, including the laws regulating bank holding companies, savings and loan holding companies, and insider lending.

(3) Title I authorizes the divestiture of a nonbank subsidiary of a bank holding company or a noninsured subsidiary of a savings and loan holding company in circumstances where such nonbank or noninsured subsidiary constitutes a serious risk to the financial safety, soundness or stability of the subsidiary bank, or insured savings and loan association.

(4) Title I requires that loans to insiders—officers and stockholders holding 10 percent or more of the stock of a bank—be aggregated with loans to companies they control. When aggregated, such loans may not exceed the lending limitations on loans to a single borrower under Federal law in the case of a national bank or the applicable State law in the case of a State-chartered bank. Insider loans over $25,000 are required to be approved by two-thirds of the bank's board of directors and such loans are required to be made on substantially the same terms as loans prevailing in the market.

(5) Title I authorizes the removal of an officer or director of a financial institution in circumstances where the individual has demonstrated a willful disregard for the safety or soundness of the institution. Present law authorizes the removal of an officer or director only in circumstances where the individual has evidenced personal dishonesty. Under present law an officer or director of an institution may be summarily suspended or removed from his position upon indictment or conviction of a felony involving dishonesty or breach of trust. Title I amends these suspension provisions to afford such an individual the opportunity for a hearing.

B. Title II. Depositary institutions interlocking management and directors

With exceptions title II prohibits interlocking management and director relationships between financial institutions that are not com-

monly owned or affiliated. The purpose of the prohibitions is to foster competition among financial institutions in financial markets. The principal provisions of title II are as follows:

(1) Title II prohibits interlocking management and director relationships among depositary institutions including commercial banks, savings and loan associations, savings banks and trust companies.

(2) The prohibitions of title II apply to depositary institutions located within the same standard metropolitan statistical area (SMSA) or within the same or adjacent or contiguous city, town, or village. However, if a depositary institution has assets in excess of $1 billion the bill would prohibit interlocking relationships between it and any other depositary institution with assets in excess of $500 million regardless of geographic location.

(3) Title II provides exceptions for:

—interlocking relationships among credit unions.

—management officials or directors of depositary institutions serving as management officials or directors of credit unions.

—interlocking management and directors among affiliated institutions including holding companies and their subsidiaries and companies which would be bank holding companies but for certain exemptions in the Bank Holding Company Act, and institutions which are commonly owned.

—existing interlocking relationships for a period of 10 years.

(4) Title II authorizes the Federal Reserve to exempt by rule interlocking management or director relationships among financial institutions where the effect would be procompetitive as in the case of thrift-owned commercial banks which are utilized for various purposes including check clearing.

C. Title III. Foreign branches

Title III was recommended by the FDIC as a "housekeeping" section.

(1) Title III requires the prior approval of the FDIC for a State-insured nonmember bank to establish a foreign branch or invest in a foreign bank. This conforms the FDIC regulated institutions to requirements that now apply to national banks and State chartered member banks of the Federal Reserve.

(2) Title III also clarifies the authority of the bank regulatory agencies to examine bank service contractors; and makes it a crime to forcibly assault or intimidate a financial institutions regulatory official.

D. Title IV. Conflicts of interest

Title IV proscribes revolving door employment practices by the heads of the financial institutions regulatory agencies and provides increases in salary for these officials to encourage them to complete their terms of office.

(1) Title IV extends the present 2-year prohibition on members of the Federal Reserve, the FDIC, and the Comptroller of the Currency who have not completed their terms of office from employment with a bank they regulate or with the bank holding company affiliated with such bank.

(2) Title IV provides the same statutory proscriptions on post-employment applying to the heads of the bank regulatory agencies to the members of the FHLBB.

(3) Title IV provides for the Chairman of the Federal Reserve to be employed at Level I and the members of the Federal Reserve, the Comptroller, the Chairman of the FDIC, the Chairman of the FHLBB, and the NUA Administrator to be employed at Level II.

NEED FOR THE LEGISLATION

Existing law proscribes interlocking management and director relationships between commercial banks, stock savings banks and trust companies in certain geographic areas. This law has become outdated.

Savings and loan associations, mutual savings banks and other financial intermediaries have become important alternative public depositories to the institutions covered by the proscriptions on interlocking relationships since the enactment of legislation 50 years ago.

Five years ago the Federal Reserve conducted a study of interlocking relationships among financial institutions and determined that the law needed updating. By letter dated September 28, 1976, Chairman Arthur F. Burns of the Federal Reserve recommended specific legislation. Title II is the Federal Reserve bill as amended by the committee.

Title II will result in greater competition between financial institutions in the financial markets which they serve. Title II does not change the case law under the antitrust laws which governs the merger of institutions in such markets. Consumers will benefit from the increased competition among financial institutions in price and quality of depository and lending services. Fund flows to the communities served by these institutions will be free of any artificial distortions arising out of conflicting management or director relationships. At the same time, where any such relationship may have positive effects on competition, the Federal Reserve will be expected to sanction them by rule or on a case-by-case basis.

While title II is intended to increase competition among financial institutions, title I of the bill gives the financial institutions regulatory agencies the authority they need to insure that each institution is operated in a safe and sound manner.

Banking institutions have experienced rapid growth during the past 25 years. Unfortunately, the capitalization of the banking system—and of especially the larger banks—has not kept pace with this explosive growth. At the same time the number of "problem banks" have become substantial. For example, according to the FDIC the number of insured banks in problem categories increased from about $25 billion in assets at the beginning of 1976 to $75 billion at the beginning of 1977.

Early this year the General Accounting Office completed and forwarded to the committee an audit report of how well the bank regulatory agencies were carrying out their responsibility in the light of the increased numbers of problem banks and large bank failures in the past several years. The GAO found that in some cases the bank regulatory agencies did not use the powers that they had to maximum effectiveness. However, the GAO specifically recommended that the powers encompassed in title I be enacted into law to enhance the regulatory ability to deal with problem situations and to prevent them from arising.

The FHLBB made a strong case for their need to augment their existing regulatory powers with those contained in title I. In a number

of specific problem situations the FHLBB has been unable to undertake timely and effective action to cure unsafe or unsound practices.

The Financial Institutions Supervisory Act of 1966 provided for uniform enforcement authority over financial institutions by all of the Federal financial institutions regulatory agencies. The 1977 Amendments to the Financial Institutions Supervisory Act contained in title I retain this uniform approach. (For a more detailed discussion of the need for title I see Committee Report 94–843 on S. 2304 in the last Congress.)

The FDIC presently has no authority to regulate the establishment of overseas branches of banks it regulates or investments in foreign banks by those banks. National banks and State member banks of the Federal Reserve need to obtain the approval of the Federal Reserve before they can establish such overseas positions. State nonmember banks are increasing in size and their operations are becoming more complex. Many larger member banks have left the Federal Reserve System and are thus no longer subject to any Federal regulatory authority respecting their foreign operations. As international financial markets become more tightly integrated, adverse effects felt in foreign operations can be visited upon domestic insured institutions. Clearly, there is an increasing need for Federal regulatory oversight with respect to the foreign operations of State nonmember insured banks.

Current law prohibits a member of the Federal Reserve, a member of the FDIC and the Comptroller from being employed by a bank under their regulatory jurisdiction for a period of 2 years unless the individual has completed the term for which he was appointed. The statute proscribing revolving door employment practices does not include a holding company of such a bank. This is a significant loophole since holding companies play an increasingly important role in the banking system and because subsidiary banks constitute the principal assets of bank holding companies. Thus in reality, employment by a bank holding company is employment by a bank. This bill closes the loophole. Also, under existing statutes the members of the FHLBB are not under the statutory proscriptions that apply to the banking agencies. The Federal regulatory structure will be improved by providing parity of treatment respecting postemployment practices among all financial institutions regulatory agencies. These restrictions, operating in tandem with increases in employment Levels for the heads of the financial institutions regulatory agencies should operate to encourage such individuals to complete the terms for which they are appointed.

CEASE-AND-DESIST ACTION AGAINST INDIVIDUALS AND REMOVAL AND SUSPENSION OF OFFICERS AND DIRECTORS

Under present law, cease-and-desist action under the Financial Institutions Supervisory Act may be taken only against an institution. This requirement has hampered the regulatory bodies from taking timely and effective action in situations where an individual and not the organization was at fault. Moreover, individuals participating in the conduct of the affairs of an institution may be removed from their positions as officers or directors only upon a showing that the unsafe or unsound practices they have engaged in which have had an adverse effect upon the institution are transactions involving personal dishonesty. Individuals who have demonstrated a willful disregard for the

safety or soundness of such institutions cannot be removed from their positions on grounds other than personal dishonesty. The requirement that fraudulent behavior be shown as a precondition for removal has hampered the regulators from taking timely action against individuals where actions have had adverse effects on financial institutions. In contrast, under present statutory law, if a director or officer of a financial institution is indicted or convicted for a felony involving dishonesty or breach of trust he may be summarily suspended or removed from his position by the regulatory agency without a hearing.

Taken together, the provisions of the bill will allow the regulatory agencies to take timely, effective and fair action against offending individuals participating in the conduct of the affairs of such institutions. Under the expanded authority of the bill, cease-and-desist action can be taken directly against individuals without the necessity for naming the financial institution in the proceeding. The regulatory agencies will have to exercise their authority in a manner so as not to intrude on the management prerogatives of the institution by commencing unwarranted actions against particular managers. It will be expected that this authority will be utilized only in those cases where adequate relief cannot otherwise be obtained. For example, there would be no need to taint the entire institution where a dominant and controlling individual is responsible for unsafe or unsound practices and relief cannot reasonably be obtained by bringing an action against the institution. In other circumstances where an insider has unjustly enriched himself at the expense of the institution the regulatory agency having jurisdiction over the matter may find it more effective to take action directly against the individual for return of property rightfully belonging to the institution. However, it may be appropriate in some cases—where the safety of the institution is not at stake—for the institution to pay the costs of attorneys fees to insure that regulatory intrusion into legitimate managerial prerogatives does not occur by the use of the new powers contained in the bill. Correctly used, however, these new powers can effectively enhance the ability of the financial institutions regulatory agencies to cure unsafe or unsound situations.

Under the expanded authority of the bill a director or officer may be removed from his position in the institution not only in cases where the individual has exhibited personal dishonesty in transactions which have resulted in harm to the institution but also in situations where the individual has demonstrated a willful disregard for the safety and soundness of the institution. The harm that must be shown under present law to effectuate a removal is that the institution suffer substantial financial loss or other damage. To this the committee has added the receipt of financial gain by the individual. Substantial financial loss means that the amount is substantial standing alone; not that the amount must be substantial as a percentage of the size of the institution. To rule otherwise, would inflate the degree of harm needed to be shown as the size of the institution increased. In the absence of congressionally-mandated standards for what is to be considered "willful disregard", the committee expects the agencies to issue interpretations from time to time, so that officers or directors will be sure of the limitations placed on their actions.

The committee also has provided a requirement for an opportunity for a hearing in connection with the suspension or removal of indi-

viduals indicted or convicted of specified crimes. Under the committee's formulation, the regulatory agency must notify the offending individual of the grounds for dismissal including the reasons why the indictment or conviction is one that the agency has determined poses a threat to the interests of an institution's depositors or may threaten to impair public confidence in the institution. This will enable an individual to obtain a meaningful hearing and review under the procedures contained in the bill to meet the objections of the current law under *Feinberg* v. *FDIC*, 420 F. Supp. 109 (D.C. 1976). Any officer or director removed under these provisions by a regulatory agency cannot thereafter participate in the conduct of the affairs of the institution except with the consent of the agency. Each agency, of course, will be expected to institute periodic reviews—perhaps annually—of such situations to determine the necessity of continuing such removals. Due process requires no less.

The bill allows the agencies to designate employees of the agencies to preside at the hearing of an officer or director suspended or removed after indictment or conviction of a specified crime. The committee expects the agencies to designate impartial and knowledgeable agency employees in carrying out this responsibility.

The bill establishes a new hearing procedure for an officer or director who is removed or suspended after indictment or conviction of a specified crime. This is a departure from the past that has been made necessary in light of the decision of the Court in the *Feinberg* case. The committee expects the agencies to follow due process requirements in the implementation of this authority.

CIVIL MONEY PENALTIES

Civil money penalties which accrue for violating particular laws can play a crucial role in deterring violations of such laws.

Within the past several years, there have been a number of instances in which violations of law have gone unpunished. The violations referred to were of a variety that could have had a detrimental effect upon the safety and solvency of financial institutions. The remedies available to the regulatory agencies to prevent and cure these violations of law were not as broad as they might have been.

In this connection, the Federal Reserve Board states:

> For example, section 23–A of the Federal Reserve Act prohibits, in part, a member bank from lending to nonbanking corporations affiliated with it except to a very limited extent. In the absence of any specific penalties a bank holding company or other person experiencing financial pressure may cause the affiliated bank to violate the provisions of section 23–A, knowing that the sole remedy is a cease-and-desist order requiring reversal of the transaction. The presence of a daily money penalty should serve as an effective deterrent to such violations.

The civil money penalties provided in the bill are designed to be strong provisions of law. The provisions provide for the penalties to be assessed from the first day of the occurrence of any violation. Thus,

the provisions should, to a significant extent, have a self-enforcing effect.

The deterrent role that civil money penalties may be expected to have on violations of section 23–A of the Federal Reserve Act extend as well to sections 19 and 22 of the Federal Reserve Act. These sections proscribe limitations on the rate of interest which may be paid on deposits and place limitations on insider loans to officers, directors, and companies which they control.

Another area in which civil money penalties can be expected to have an important deterrent effect is in facilitating adherence to the requirements of the Bank Holding Company Act and the Savings and Loan Holding Company Act. Holding companies are supposed to be a source of strength to their financial institutions subsidiaries. In too many cases the financial institutions have been misused as a source of funds for holding company purposes. A number of violations of those acts have been uncovered by the agencies in recent years. Some of the violations were willful and serious enough to be referred to the Criminal Division of the Department of Justice.

The experience of the Federal Reserve and the FHLBB is that the criminal remedy for violations of the Bank Holding Company Act and the Savings and Loan Holding Company Act is a time-consuming and lengthy process. More effective and appropriate relief can be obtained, particularly in situations where the willful character of the violation is not clear, by the imposition of civil money penalties.

The ability to impose civil money penalties on violators of the holding company law should have an important deterrent effect. Recent legislative changes have also extended the cease and desist provisions of the Financial Institutions Supervisory Act of 1966 to bank holding companies. This bill extends those provisions to savings and loan holding companies. The combination of those powers plus the civil money penalty provisions gives the agencies the power they need to cure unsafe or unsound conditions and to stop violations of laws by holding companies.

In addition to these civil money penalty provisions, which should aid in preventing unsound or problem situations from arising, the bill provides that money penalties may be assessed against any institution or individual violating the terms of any cease-and-desist order. This latter civil money penalty provision should be particularly helpful in curing unsound or problem situations once they have arisen by requiring individuals and institutions to take orders issued by the regulatory agencies seriously, thereby resulting in the self-enforcement of orders.

Under the bill civil money penalties may be assessed only on violations occurring after the date of enactment of the legislation. The penalties provided for—up to $1,000 per day, for example, in the case of a violation of a final cease-and-desist order—are required to be assessed and collected by written notice with the opportunity for a hearing under the Administrative Procedure Act with the right of appeal to a U.S. circuit court of appeals. In assessing the amount of the penalty the regulatory agency is required to consider the appropriateness of the penalty with respect to the size of the financial resources and good faith of the bank or person charged, the gravity of the violation, the history of previous violations, and such matters as justice requires.

LOANS TO INSIDERS

While insider loans are prohibited by the FHLBB by regulation, commercial banks operate under no such restriction. Commercial banks have incurred excessive risks by making loans to insiders and their related business enterprises. Under present law, loans to companies controlled by officers, directors, and substantial stockholders are not prohibited or significantly restricted. State member banks and nonmember insured banks are subject to the State laws in which they are chartered. Proscriptions on insider loans and rules requiring the aggregation of various classes of loans vary from State to State. Section 5200 of the Revised Statutes limits loans which can be made by national banks to any single borrower to an amount equal to 10 percent of the capital and surplus of the national bank. However, the 10 percent limitation can be easily avoided by making loans to separate corporations under the ownership or control of the original borrower. For example, if a single individual owned or controlled 10 corporations, each corporation could borrow up to 10 percent of the bank's capital and surplus. In reality, 100 percent of the bank's capital and surplus would be loaned one borrower. As a practical matter, then, there is no real limit on the amount of money a bank can loan to a single insider.

According to the Federal Deposit Insurance Corporation, insider loans, that is loans to officers, directors, stockholders, and their interests, have been the principal cause of bank failures over the past 15 years. Statistics compiled by the FDIC show that 54 percent of the bank failures were prompted by self-serving loans to bank management. The FDIC suffered losses amounting to $254 million from its insurance fund from inception to the end of 1974. Of this amount, $179 million or 70 percent of the losses were attributed to insider transactions.

Insider loans have been a factor in the largest and most spectacular bank failures in recent years. In the case of U.S. National Bank, insider loans amounted to about $400 million. This bank had deposits of about $1 billion. In the Hamilton National failure, insider loans were a significant factor in the deterioration of the bank. Together with its bank holding company, Hamilton National had assets of about $1 billion. In the Bank of the Commonwealth situation—assets $1 billion—insider self-dealing was a major cause of the banks deterioration; the bank would have failed if the FDIC had not advanced funds to the bank in the form of a capital note.

In other cases a bank may make a substantially high percentage of its loans to insiders. For example, in the District of Columbia, the Madison National Bank makes no home mortgage loans. However, all but one of its construction loans of over $100,000 went to persons connected with the bank and 25 percent of the bank's loans went to insiders.

The insider provisions of S. 71 require that all loans to officers and stockholders holding at least 10 percent of any class of voting securities of any insured institution be aggregated with all loans to companies in which they have a controlling interest for the purpose of applying loan limitations to single borrowers under Federal or State law. The term "company" is given a broad meaning in the bill and includes corporations, partnerships, sole proprietorships, or joint ventures,

among others. Control is defined to include those who own 25 percent or more of a company's stock or who otherwise exercise a controlling influence over the management of the company.

By requiring the aggregation of loans to officers and 10 percent stockholders for the purpose of applying loan limitations that are applicable to single borrowers, inside directors—who are also officers—and directors owning substantial ownership interests—10 percent stockholders—would also be covered by the aggregation rules. But aggregation rules would not apply in the case of outside directors—those directors who are not officers and who are not 10 percent shareholders. This exception has been made to meet the argument that in the absence of such an exemption some banks in small communities may have difficulty in filling boards of directors with capable directors.

The insider provision of S. 71 represents a significant strengthening of the laws applicable to insider loans. Whereas under present law there is no practical limit on the amount of loans to a single borrower, S. 71 would impose a limit based on the banks capital and surplus: 10 percent in the case of national banks and the percent applicable under State law for State chartered banking institutions. In addition to the aggregation requirements, S. 71 would require all loans to officers, directors or 10 percent stockholders, and to the companies they control, in excess of $25,000, to be approved by two-thirds of the board of directors of the bank, with the interested party abstaining from participating directly or indirectly in the voting. Further, all such insider loans are required by S. 71 to be made on substantially the same terms, including rates and collateral, as those prevailing at the time for comparable transactions with other persons and may not involve more than normal risk of repayment or present other unfavorable features.

Finally, the Federal Reserve is given the authority to write rules and regulations to effectuate the purposes and to prevent evasions of the insider provisions of S. 71. Such rules may provide a reasonable period of time to bring existing loans into conformity with the prohibitions of S. 71.

BANK HOLDING COMPANIES AND SAVINGS AND LOAN HOLDING COMPANIES AND THEIR SUBSIDIARIES

Bank holding companies and savings and loan holding companies have been permitted to engage in activities outside the traditional fields of banking and operating savings and loan associations. In some situations these activities have involved significant risks or losses to a point where the safety of subsidiary financial institutions have been threatened. Holding companies are supposed to be a source of strength to subsidiary financial institutions. Unfortunately, in too many instances holding companies have been a drain on the subsidiary financial institution, affecting the safety or soundness of such institutions.

Under the bill, whenever the Federal Reserve, in the case of a bank holding company, or the FHLBB, in the case of a savings and loan holding company, have reason to believe that the continuation by a holding company of the ownership or control of a nonbank or noninsured subsidiary constitutes a serious risk to the financial safety of a

subsidiary bank or savings and loan association, as the case may be, the Federal Reserve or the FHLBB may order such holding company to divest itself of the nonbank or noninsured subsidiary, or to terminate its activities.

Due process is afforded holding companies by virtue of the requirement for notice and opportunity for hearing before such an order can be issued. Any divestiture or termination so ordered must take place within 120 days or such longer period as the Federal Reserve or the FHLBB may in their discretion direct in unusual circumstances. This latter provision is not intended to raise questions for court review of the terms of any termination or divestiture order. Rather the provision is intended to lodge sole discretion in the regulatory agencies to extend the time for divestiture or termination in extraordinary circumstances when they alone, in cases within their respective jurisdictions, feel the public interest might be served.

S. 71 also authorizes the FHLBB to take cease-and-desist action against savings and loan holding companies and their subsidiaries and against service corporations affiliates. The Federal Reserve presently has cease and desist authority over bank holding companies and their subsidiaries. S. 71 provides the FHLBB with that authority over savings and loan holding companies. S. 71 also provides the Federal Reserve with cease-and-desist authority over Edge Act Corporations—Federally chartered corporations doing a foreign banking business—whether or not such corporations are subsidiaries of bank holding companies. In addition, S. 71 provides the Federal Reserve with the authority to issue subpenas in connection with hearings and investigations under the Bank Holding Company Act. Vice Chairman Gardner of the Federal Reserve testified that the "Board's ability to investigate possible violations or evasions of the Bank Holding Company Act is seriously hampered by the lack of this explicit subpena authority." S. 71 gives the Federal Reserve the authority it needs.

S. 71 further provides the FHLBB with authority to provide assistance to problem institutions whether or not the institution is a subsidiary of a savings and loan holding company. This authority is similar to the authority that the FDIC has with respect to problem commercial banks and which the FDIC has used in a number of situations such as the failure of the Franklin National Bank. In addition to current authority the FHLBB is authorized to make a contribution to another institution to facilitate the merger of a problem institution either in default or in danger of default. But the FHLBB is not authorized to make a contribution where the cost may exceed liquidating the institution except in a case where the FHLBB finds that the continued operation of the savings and loan association is essential to provide adequate savings or home financing services to its community.

Under current law a bank holding company which directly or indirectly acquires shares in a bank must divest those shares within a period of 2 years. Bank holding companies acquire such shares in connection with defaulted loans made by their subsidiary banks in which bank stock has been taken as collateral. In some cases the firm 2-year requirement for divestiture can work an unwarranted financial hardship on bank holding companies through the action of adverse market forces. Under current law when a bank holding company acquires

shares in a nonbank company through a subsidiary bank it has a 5-year period in which to divest such shares. S. 71 conforms the period of divestiture of bank shares to that applying to nonbank shares. At the same time the committee has made two additional conforming changes in the law: the 5-year divestiture period of nonbank shares is applicable to shares acquired by nonbank subsidiaries of bank holding companies as well as bank subsidiaries; and a company acquiring shares in a bank in connection with a defaulted loan has a maximum of 5 years in which to divest such shares before the company will be determined to be a bank holding company for reporting purposes.

INTERLOCKING MANAGEMENT AND DIRECTORS

Interlocking employees and directors have been prohibited among commercial banks and stock savings banks and trust companies for over 50 years in the same or adjacent or contiguous city, town, or village. The law has become outdated. In some respects the law has become too restrictive and in other cases the law is not restrictive enough.

Since the enactment of the present statutes other types of depository institutions have become effective competitors for depositors funds. The geographic concept of city, town, or village is outmoded in urban areas. The prohibition on all employee interlocks is far too broad. The situation calls for more precise treatment.

S. 71 prohibits interlocking relationships by management officials at depository institutions in certain specified areas and among larger institutions regardless of location. The term management official is defined as an employee with management functions, a director or trustee. Present law covers all employees regardless of whether they have management responsibilities.

S. 71 proscribes management official interlocking relationships among depository institutions. Depository institutions include commercial banks, savings banks, trust companies, savings and loan associations, cooperative banks, industrial banks, and credit unions. This expanded definition of financial intermediaries over existing law reflects the current reality that these institutions effectively compete among one another for depositors funds.

Interlocking management and director relationships among financial institutions have had adverse competitive effects in financial markets. This is not to condemn all interlocking relationships, for in some circumstances they can have procompetitive effects. S. 71 proscribes anticompetitive interlocking relationships and contains specific exemptions for those interlocking relationships which will enhance competition. S. 71 further places in the Federal Reserve the responsibility to exempt other interlocking relationships by rule or regulation where the effect of the relationship would be procompetitive.

Under S. 71 the geographic area in which interlocking relationships are banned is the SMSA in which the institutions are located or outside of an SMSA in the city, town, or village or contiguous or adjacent city, town, or village in which the institutions are located. S. 71, therefore, expands the current geographic areas in which the interlock ban

is applicable to include SMSA's. This expanded definition is more realistic in that SMSA's are economic trade areas and reflect the area in which financial institutions compete. However, the committee action in proscribing interlocking relationships among all financial institutions in SMSA's should not be interpreted as reflective of an intent to alter the existing standards under the antitrust laws by which merges or acquisitions of financial institutions are judged as to line of commerce and section of the country.

The committee has exempted interlocking management or director relationships among credit unions and such interlocks between depositary institutions serving credit unions. Credit unions are usually small in size and serve limited membership constituencies. A ban on credit union interlocking relationships would result in a scarcity of knowledgable managerial talent serving credit unions. Credit union directors, as is known, are elected by the members and serve without compensation. Similarly, credit unions are enhanced competitively by management officials of depositary institutions serving credit unions in various capacities. These considerations do not persuade the committee to grant a general exception for the case of a credit union management official serving other depositary institutions. In such situations, however, the Federal Reserve will be expected to exempt procompetitive interlocking relationships by rule or regulation.

S. 71 provides a specific exemption for mutual savings banks which own all of the stock of a trust company or between mutual savings banks or cooperative banks and trust companies which are not in competition with them. These are situations in which mutual savings banks have a controlling or substantial interest in a trust company which provides services for the mutual savings banks. These situations present procompetitive interlocking relationships. For example, through such relationships mutual savings banks are able to have their checks cleared on a nondiscriminatory basis since existing rules governing check clearing facilities discriminate in favor of commercial banks. This reasoning, applicable to the specific exemptions for mutual savings banks and trust companies which have been readily identifiable, is also applicable to the numerous relationships between some independent smaller banking institutions and other banks, credit unions and banks, and savings and loan associations and banks. The relationships referred to are ones in which a commercial bank has been purchased and is being used as a service center for check clearing, liquidity, and other purposes. The committee expects the Federal Reserve to survey the extent of these situations and to exempt them by rule or regulation. Examples of such situations are:

(1) Banker's banks which are owned by commercial banks and which act as wholesalers for other banks. Such banks already exist in Minnesota and Virginia according to the testimony of the Independent Bankers Association and are under consideration in other States.

(2) Banks owned by individual stockholder bankers which provide needed services to independent banks.

(3) Credit union or savings and loan owned banks or trust companies whose relationship exists among other reasons to assure access to the Federal Reserve check clearing system on a nondiscriminatory basis such as in Ohio, Texas, and Kansas.

(4) Newly chartered savings and loan associations which may need the benefit of bank officer or director advice in early years of operation.

The prohibitions of the bill respecting interlocking relationships are applicable upon enactment of the legislation. However, existing interlocking relationships are grandfathered for a period of 10 years. The Federal Reserve is given authority to grant exemptions to the prohibitions by rule or regulation; the Federal Reserve is also given authority to write rules and regulations to prevent evasions of the prohibitions. For example, one exception in S. 71 is for affiliated institutions, that is an institution more than 50 percent of the voting stock of which is owned in the aggregate by one or more persons who also beneficially own in the aggregate 50 percent of the voting stock of another institution. By rule the Federal Reserve should proscribe the switching of several shares of stock between individuals to defeat the ban which would otherwise obtain on interlocking management or directors between such institutions which are not truly commonly owned.

FOREIGN BRANCHING AND FDIC HOUSEKEEPING AMENDMENTS

S. 71 requires FDIC consent in connection with the establishment of foreign branches or the acquisition of foreign bank stock by nonmember insured banks. While member banks of the Federal Reserve—including both national banks and state chartered member banks—are presently required to obtain Federal Reserve consent prior to establishing a foreign branch or acquiring foreign bank stock, no Federal approval is necessary for such actions by nonmember insured banks.

Foreign activities of nonmember insured banks may affect the safety and soundness of such banks just as such activities may in the case of member banks of the Federal Reserve. Foreign activities of nonmember banks have a direct impact on the FDIC's insurance risk. S. 71 provides the FDIC with the authority it needs to assess the risks banks under its jurisdiction undertake overseas.

The FDIC presently has authority to examine bank holding company affiliates of nonmember insured banks if they own 50 percent or more of the bank's stock. Under the Bank Holding Company Act an affiliate relationship arises if a company owns 25 percent of the stock of a bank. S. 71 conforms the affiliate definition of FDIC law to the Bank Holding Company Act. Under S. 71, therefore, the FDIC has the authority to examine a bank holding company affiliate of a nonmember insured bank if it holds 25 percent of its stock.

S. 71 clarifies the authority of the bank regulatory agencies to examine bank service contractors. Under the Bank Service Corporation Act each bank would be required to notify the appropriate bank regulatory agency of a service relationship by which bank services are to be performed off the premises of the bank within 30 days. The performance of such services would be subject to the normal examinations of the bank regulatory agencies that apply to the bank concerned.

S. 71 would also expand the current law which makes it a crime to forcibly assault or intimidate certain officers of the Government to include within the persons covered examiners of the FDIC, the Comptroller, the Federal Reserve, the FHLBB, and the National Credit Union Administration.

S. 71 also provides a number of other "housekeeping" amendments to the FDIC statutes. These are set out in the section-by-section analysis.

CONFLICTS OF INTEREST

During recent years a number of heads of financial regulatory agencies have left before their terms of office were completed. Financial considerations played a strong part in most of the decisions to terminate Government service at an early stage. Some of these individuals took lucrative jobs in the very institutions they had been previously regulating. Public confidence in Government regulation is enhanced if appointees are encouraged to finish the terms of office for which they are appointed.

S. 71 seeks to accomplish those goals. The Chairman of the Federal Reserve is elevated to a Level I position. This position, at the Cabinet Level, is more fully consonant with the posture of the Chairman of the Federal Reserve in Government circles. Cabinet level status for the Chairman of the Federal Reserve, furthermore, better reflects the leadership that individual plays in the conduct of the monetary policy of the Nation on behalf of the Congress.

S. 71 also elevates to Level II the positions of member of the Federal Reserve Board, the Comptroller of the Currency, the Chairman of the Federal Deposit Insurance Corporation, the Chairman of the Federal Home Loan Bank Board, and the Administrator of the National Credit Union Administration. Deputy Cabinet levels for these officials more fully reflects their responsibilities and should have a positive effect on completion of terms of office.

Present law prohibits members of the Federal Reserve, FDIC, and Comptroller from taking jobs with banks they regulate prior to completing their terms of office. The present statutory prohibition does not cover postemployment with the holding company of a bank which has been regulated by such an officeholder. No statutory proscription applies to members of the FHLBB.

S. 71 closes the loophole under which a financial institutions regulator may be employed by a holding company of a bank which he is prohibited from taking a job with prior to completion of his term. S. 71 also applies the same proscriptions to members of the FHLBB as apply to heads of other financial institutions regulatory agencies.

[The following letters are considered important additions to this report:]

CHAIRMAN OF THE BOARD OF GOVERNORS,
FEDERAL RESERVE SYSTEM,
Washington, D.C., September 5, 1975.

HON. WILLIAM PROXMIRE,
Chairman, Committee on Banking, Housing and Urban Affairs, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: Accompanying this letter is a proposed bill encompassing several joint recommendations by the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, and the Comptroller of the Currency. All of these recommendations arise from the agencies' concern over "problem bank" situations and are designed to help prevent or correct such situations.

Sections 1, 2, 5, 6(c), and 7 of the bill would, in part, provide civil penalties for violations of various provisions of the Federal Reserve Act, the Federal Deposit Insurance Act, the Bank Holding Company Act of 1956, and the Financial Institutions Supervisory Act of 1966.

In recent years there have been a number of instances in which supervised banks have violated various provisions of law. The violations in question were of a type that could have an adverse effect on the safety or soundness of the banks, and no effective remedy has existed for such violations. For example, section 23–A of the Federal Reserve Act prohibits, in part, a member bank from lending to nonbanking corporations affiliated with it except to a very limited extent. In the absence of any specific penalties a bank holding company or other person experiencing financial pressures may cause the affiliated bank to violate the provisions of section 23–A, knowing that the sole remedy is a cease-and-desist order requiring reversal of the transaction. The presence of a daily money penalty should serve as an effective deterrent to such violations.

In assessing such a civil penalty, the agencies would be required to give due consideration to its appropriateness. In particular, they would have to take into account the financial resources and the good faith of the bank or person charged with a violation, the gravity of the violation, and the history of previous violations. We would hope that such a remedy would have to be used infrequently, if at all, and that its primary benefit would be in deterring violations by a member or insured nonmember bank, its officers and directors, or persons affiliated with such a bank.

For similar reasons primarily relating to deterrence, we also recommend, in sections 1 and 2, that civil penalties be provided for violations of sections 19 and 22 of the Federal Reserve Act, the former relates to the payment of interest on deposits and the latter restricts transactions between a member bank and its officers and directors. It might be noted that the proposed amendment to section 19 would give the Board a remedy comparable to that presently available to the Federal Deposit Insurance Corporation with respect to nonmember insured banks. The restrictions of section 22(h), as amended by the proposed bill, and civil penalties for violations thereof, would be applied to nonmember insured banks by section 7 of the proposed bill.

A number of violations of various provisions of the Bank Holding Company Act have come to the attention of the Board of Governors in recent years. Some of these violations have been deemed willful and serious enough to be referred to the Department of Justice for prosecution under section 8 of the Bank Holding Company Act. Such referral is the Board's only statutory remedy at present when it finds such a violation.

To date, one referral has resulted in a conviction and a substantial fine. However, it is the Board's experience that the criminal remedy is an involved and lengthy process. In the case of the conviction, over two years elapsed between the time the violation came to the Board's attention and the ultimate conviction.

The Board therefore recommends in section 5 that it be given the discretion to impose civil penalties for violations of the Bank Holding

Company Act. It believes that the addition of this alternative method of imposing penalties for violations of the act will provide a significant deterrent effect.

In addition to the above recommendations relating to penalties designed to have a deterrent effect, the regulatory agencies believe that further substantive restrictions should be placed on transactions between banks and insiders. In this regard, it does not appear sensible to have a prohibition regulating only loans to officers of a bank and not loans to directors, stockholders, and corporations affiliated with such individuals.

We therefore recommend, as a preventative measure, that section 22 of the Federal Reserve Act be amended to cover officers, directors, and individuals holding more than 5 percent of the voting securities of a member bank and any companies controlled by such an officer, director, or 5 percent shareholder. These restrictions should also be applied to nonmember insured banks. This proposal, which is set forth in sections 3 and 7 of the bill, would aggregate the loans or extensions of credit to such an officer, director, or shareholder and to all companies controlled by such an officer, director, or shareholder and provide that the aggregate may not exceed the limit on loans to one borrower established by Federal or State law.

This legislation is premised on the concern, borne out by some recent experiences, that a bank may incur excessive risks by making large loans to insiders and their related business enterprises. We believe that in some instances the existence of lending limits, as well as civil penalties for their violation, may well prevent some problem bank situations from arising.

In addition to the above measures aimed at preventing problem bank situations, the bill includes two proposals designed to help deal with a problem bank situation once it exists. The first of these involves a proposed amendment to the Financial Institutions Supervisory Act of 1966 relating to removal proceedings. Under present law—section 8(e) of the Federal Deposit Insurance Act—a bank director or officer who has engaged in a violation of a law, rule, or regulation, participated in an unsafe or unsound practice, breached his fiduciary duty, or violated a final cease-and-desist order and whose action is seen as causing substantial financial loss to the bank or damage to its depositors, may be removed only where it is shown that he has engaged in an act amounting to personal dishonesty. Such a showing is often difficult to make, and the present law thus effectively bars removal of individuals who have repeatedly demonstrated gross negligence in the operation or management of a bank, or a willful disregard for the safety and soundness of the bank, but who cannot be shown to have exhibited personal dishonesty.

We believe that adequate protection of the bank, its depositors, and the public interest requires the act to be amended to allow the appropriate supervisory agency to remove such individuals. The amendments contained in section 6(d) of the bill would effectuate this proposal. We believe that the present hearing and judicial review requirements of the act are sufficient to shield those who are innocent of personal wrongdoing from arbitrary or capricious administrative action. However, the proposed amendment would help to protect the financial safety of institutions against the actions of reckless individuals.

In addition, it appears that more efficient and speedy enforcement of final orders and consent agreements under the Financial Institutions Supervisory Act of 1966 can be obtained if civil penalties attach to violations of such final orders and agreements. Section 6(e) of the proposed bill embodies this recommendation and, we believe, would constitute a more effective deterrent than the present procedure, which requires the appropriate agency to apply to the U.S. district court to secure enforcement.

It appears to both the Board of Governors and the Comptroller of the Currency that a needless procedural complication presently exists in the Financial Institutions Supervisory Act of 1966. Section 8(e) of the Federal Deposit Insurance Act provides that in order to institute removal proceedings against a director or officer of a national bank the Comptroller must certify the facts to the Board of Governors, which determines, with the Comptroller sitting as a member of the Board of Governors, whether or not to institute proceedings. Following such proceedings, the matter comes before the Board once more for final action, again, with the Comptroller sitting as a member of the Board of Governors. This procedure appears to be unnecessarily duplicative. All of the procedural safeguards and advantages of having a board rather than an individual make the decision can be retained by providing for certification of the recommendations of the hearing officer to the Board of Governors for final action but allowing the Comptroller's office to institute and prosecute the proceeding. The bill in section 6(d) would obtain this result and thus increase the efficiency of the process.

The Federal Deposit Insurance Corporation has previously introduced legislation that would amend sections 8(b) and 8(c) of the Federal Deposit Insurance Act to make it clear that cease and desist proceedings may be instituted against directors, officers, employees, and agents or other persons participating in the conduct of the affairs of a bank, regardless of whether or not the bank itself is named in the proceeding. This provision is supported by the other agencies and is found in section 6 (a) and (c) of the proposed bill. The amendment further makes it clear that the Board of Governors has similar powers with respect to bank holding companies and their officers, directors, employees, and agents.

Additionally, section 6(b) of the proposed bill recommends a technical amendment to section 8(b)(3) of the Federal Deposit Insurance Act, as amended, to make it clear that cease and desist proceedings may be instituted against Edge and Agreement Corporations whether or not those institutions are subsidiaries of holding companies.

The proposed bill includes in section 4 a provision designed to aid the Board of Governors in handling a problem bank situation where adverse effects have arisen from the relationship between the banking and nonbanking subsidiaries of the parent holding company. The Board's experience has been that problems and unfavorable publicity connected with a nonbanking subsidiary of a bank holding company may have an adverse impact on banks within the bank holding company and may lead to serious difficulties for such banks. Further, the Board believes, as it has often stated, that a bank holding company should be a source of financial strength for its subsidiary banks. In this regard, nonbanking subsidiaries within a bank holding company

structure should augment rather than detract from that strength. For this reason, the Board believes it should have the power to order divestiture of a bank holding company subsidiary or termination of a nonbanking activity by a bank holding company whenever it has a reasonable cause to believe that the continuation of such activity or ownership constitutes a serious risk to the financial safety, soundness, or stability of a bank holding company's subsidiary bank[s].

The proposed legislation would give the Board such power, after providing the parent holding company with due notice and opportunity for a hearing. The amendment provides that the divestiture may be by sale or by pro rata distribution to the shareholders of the bank holding company. A relatively short period is provided within which such divestiture must be carried out in order to assure that the activity threatening the bank is terminated as rapidly as possible.

The Board recognizes that this power to order divestiture represents a drastic remedy and contemplates that it would be exercised only in very rare instances. However, the Board's experience to date leads it to believe that in some instances this remedy should be available in order effectively to protect the interests of a banking subsidiary of the bank holding company, its depositors, and customers.

In addition to the proposals contained in this bill, recent experience has convinced us that the definition of affiliate in the National Bank Act should be expanded to cover a greater range of relationships that would then be subject to the limitations on loans contained in section 23–A of the Federal Reserve Act. Such changes could be a major factor in curbing abuses by insiders. Conversely, experience has also led us to believe that in the case of banking affiliates that are subsidiaries of the same holding company, the restrictions of section 23–A may be counterproductive and may prevent the holding company from using its resources as effectively as a branching system. The agencies are presently working on a draft bill that will address itself to these issues and we expect to forward it for consideration in the near future.

We believe that adoption of the proposed bill would help to decrease the incidence of problem bank situations and significantly aid each of our agencies in our ability to require corrective action in problem bank situations. We therefore hope that Congress will act favorably on the recommendation.

Sincerely yours,

ARTHUR F. BURNS.

CHAIRMAN OF THE BOARD OF GOVERNORS,
FEDERAL RESERVE SYSTEM,
Washington, D.C., September 28, 1976.

Hon. WILLIAM PROXMIRE,
Chairman, Committee on Banking, Housing, and Urban Affairs, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: The Board of Governors of the Federal Reserve System is pleased to reply to your request for appropriate language to carry out the Board's recommendation contained in its annual report for 1975 for changes in the law regarding interlocking relationships between depository institutions. A proposed bill is enclosed, the principal provisions of which are explained below.

Section 8 of the Clayton Act (15 U.S.C. 19) at present prohibits interlocking personnel relationships between a member bank and another bank located in the same or a contiguous or adjacent community. After a special review of interlocking bank relationships by the Reserve Banks and Board staff, the Board concluded in 1970 that expansion of the prohibition to cover all depository institutions is justified. The need for this broadening of the prohibition has increased over the years as the range of powers of institutions has expanded and their roles as financial intermediaries have become somewhat more alike.

Interlocking directorates are not necessarily harmful. They can benefit the corporations involved and the public they serve by facilitating the free interchange of advice, ideas, and experiences among directors of the varied backgrounds that are necessary to maintain high standards of performance by boards of directors. The Clayton Act recognizes this fact in its design to prohibit only those interlocks that tend to diminish or eliminate competition.

However, interlocking relationships between institutions that compete for the funds of the public involve a risk of abuse that the Board believes outweighs the reasonable expectation of benefits that might flow from such relationships. This reasoning is valid not only with respect to relationships between member banks and other banks. It is equally applicable to interlocking management personnel relationships between any institutions engaged in the business of receiving deposits that may be in competition with each other: Member bank, nonmember bank, savings and loan association, mutual savings bank, industrial bank, credit union, or other similar institution, whether or not its deposits are insured by a Federal agency.

The proposed bill is drafted as a separate act, applicable to all depositary institutions—section 1—rather than as an amendment to section 8 of the Clayton Act. However, the banking sections of section 8 would be repealed—section 8.

The draft would apply the prohibitions to all depositary institutions and holding companies for depositary institutions—section 5(a)(b). In order to avoid time-consuming determinations of whether two communities are adjacent to one another, now required under section 8 of the Clayton Act, the prohibitions are applied on a combination of market area and distance. Specifically, any interlock between institutions located in either the same standard metropolitan statistical area or within 50 miles of each other would be prohibited—section 2. This limitation is suplemented by a prohibition against any interlock between an institution exceeding $1 billion in total assets and another exceeding $500 million in total assets—section 3.

Section 8 of the Clayton Act at present exempts interlocks between banks under common control. Thus, the prohibition does not apply to a holding company and its subsidiaries or to two subsidiaries of the same holding company. In addition, the exemption applies whenever the same persons own 50 percent of the stock of two institutions. As a result, the prohibitions of the act can be evaded by exchange of a few shares of stock between two persons where one owns more than 50 percent of the shares of one depositary institution and the other owns more than 50 percent of the shares of another depositary institution. To correct this problem the proposed bill, while continuing the common control exemption, would eliminate shareholders of less than

5 percent from the computation of the 50 percent common ownership—section 5(c)(ii).

Section 8 of the Clayton Act at present applies to interlocking service as a "director, officer or employee." To avoid unnecessarily prohibiting interlocking relationships between depositary institutions that do not present significant potential for diminishing competition, the attached draft does not prohibit interlocking service by an employee or officer unless he performs management functions for one of the institutions involved—section 5(d).

The prohibition would be administered and enforced by the Comptroller of the Currency for national banks, the Board of Governors for State member banks, the Federal Deposit Insurance Corporation for nonmember insured banks, the Federal Home Loan Bank Board for insured savings and loan associations, the National Credit Union Administration for insured credit unions, and the Department of Justice for all other institutions—section 7. The respective Government agencies will use their existing powers for enforcement purposes.

It is not contemplated that extensive regulation would be required to enforce the revised interlock prohibition. However, as a precaution, general regulatory authority is conferred on the Board of Governors. In addition, the Board would have authority to prescribe regulations, consistent with the purposes of the act, that would permit some interlocks—section 10. This is appropriate in our view since section 8 of the Clayton Act now permits the Board to authorize one interlock and the Board's regulation L now authorizes an interlock between institutions in the process of consolidation or merger and an interlock with an institution in a low-income area that is in need of managerial skills. Other situations may arise in the future that would warrant special treatment and where more than one interlock would be desirable. For example, it is possible that the authorization of some interlocks involving an established depositary institution and a small depositary institution or newly established depositary institution for a limited period of time might foster rather than diminish competition.

The draft bill provides 5 years for phasing out existing interlocks—section 11. The Board believes that making the legislation effective at an earlier time would be unnecessarily disruptive to institutions in their efforts to maintain qualified management and directors.

The Board urges introduction and enactment of the draft bill. Please let us know if we may be of assistance to you or your committee's staff in connection with this legislative proposal.

Sincerely yours,

ARTHUR F. BURNS.

FEDERAL DEPOSIT INSURANCE CORPORATION,
Washington, D.C., February 18, 1977.

HON. WALTER F. MONDALE,
President of the Senate, U.S. Senate,
Washington, D.C.

DEAR MR. PRESIDENT: Enclosed for appropriate referral and consideration is a bill "to amend the Federal Deposit Insurance Act (12 U.S.C. 1811–31), and for other purposes" and a section-by-section

analysis thereof. This bill contains a number of technical "housekeeping" amendments to the Federal Deposit Insurance Act, but is not designed to effect any changes of a controversial nature.

Very truly yours,

ROBERT E. BARNETT, *Chairman.*

FEDERAL HOME LOAN BANK BOARD,
Washington, D.C., May 18, 1977.

HON. WILLIAM PROXMIRE,
Chairman, Committee on Banking, Housing, and Urban Affairs,
Washington, D.C.

DEAR MR. CHAIRMAN: We would like to take this opportunity to express the strong support of the Federal Home Loan Bank Board for S. 71, a bill to strengthen the supervisory authority of the Federal banking agencies over financial institutions and their affiliates. The Board's Acting General Counsel will be testifying on behalf of the Board in support of the bill on May 24, 1977. At that time we will be suggesting some perfecting amendments to S. 71 which we believe would materially aid the Board, as well as indicating those provisions of S. 71 which are of greatest importance to us. Through this letter, we would like to reemphasize the Board's support for this legislation. Based on a decade of experience with the Supervisory Act, we believe that S. 71 is a good bill which will significantly aid the enforcement efforts of this agency.

Regarding S. 73, the Depositary Institutions Management Interlocks Act, we oppose any management interlock which restrains competition; however, we believe that it is an open question whether every interlock is necessarily anticompetitive. If Congress wishes to bar all interlocks, however, we believe the bill is to be preferred to ad hoc prohibitions established through litigation and administrative action. From this perspective, we support S. 73.

We respectfully request that this letter be included as a part of the printed record of your committee's forthcoming hearings on this legislation.

Sincerely,

GARTH MARSTON,
GRADY PERRY, JR.,
Board Members.

Section-by-Section Analysis

Title I. Supervisory authority over depositary institutions

Section 101 would add a new section to the Federal Reserve Act which would authorize the Federal Reserve in the case of any member bank and the Comptroller of the Currency in the case of a national bank to assess civil money penalties against a member bank or an individual for any violation of section 22 or section 23–A of the Federal Reserve Act. Those sections limit loans to insiders and loans to affiliates. A civil money penalty may be assessed of not more than $1,000 per day for each violation. The penalty may be assessed only after notice and consideration of the appropriateness of the penalty with respect to the size of financial resources and good faith of the member bank or person charged, the gravity of the violation and the history of previous violations. Section 101 provides for a full hearing under the Administrative Procedures Act in a contested case with the right of appeal to a U.S. circuit court of appeals.

Section 102 would authorize the assessment of a civil money penalty in the same manner as authorized under section 101 for any violation of section 19 of the Federal Reserve Act. The amount of the penalty under this section, however, is limited to not more than $100 per day for each violation. Section 19 of the Federal Reserve Act prescribes reserve requirements and the amount of interest which may be paid on deposits at member banks.

Section 103 would amend section 22 of the Federal Reserve Act and place additional restrictions on loans to insiders. Loans of officers and stockholders are required to be aggregated with loans to companies which such individuals control. This section provides definitions for the term "company" and for the term "control." When aggregated, such insider loans may not exceed the limitations provided for single borrowers under section 5200 of the Revised Statutes for national bank—10 percent of the capital and surplus of the bank—or the limitations provided under applicable State law for State member banks or insured nonmember banks. Loans to insiders over $25,000 must be approved by two-thirds vote of the Board of Directors of the bank and not be on favorable terms to insiders. However, many banks provide lower interest rates and reduced fees to employees, including nonexecutive officers, for example, on home loans and credit card accounts. New section 22(h)(3) of the Federal Reseve Act thus is not intended to preclude member banks from continuing to offer such employee benefits to nonexecutive officers on substantially the same terms prevailing for comparable loans to other employees.

Section 104(a) would authorize the Federal Reserve Board to require the divestiture of a nonbank subsidiary of a holding company not a subsidiary of a bank, or the termination of such nonbank activities wherever there is reasonable cause to believe that such subsidiary

constitutes a serious risk to the financial safety, soundness, or stability of a bank holding company's subsidiary bank(s) and is inconsistent with sound banking principles or with the purpose of the Bank Holding Company Act or with the Financial Institutions Supervisory Act. Such divestiture or termination is required to be consummated within 120 days or such longer period as the Federal Reserve Board in its sole discretion may direct in unusual circumstances.

Section 104(b)(1) would authorize the Federal Savings and Loan Insurance Corporation, whenever it has reasonable cause to believe that the continuation by a savings and loan holding company of any activity or of ownership or control of any of its noninsured subsidiaries, constitutes a serious risk to the safety, soundness, or stability of a subsidiary insured institution or institutions, and is inconistent with the sound operation of an insured savings and loan association or with the purposes of section 408 or with the Financial Institutions Supervisory Act, to order the savings and loan holding company or any of its noninsured subsidiaries, after due notice and opportunity for a hearing to terminate such activities or to terminate—within 120 days, or such longer period as the FSLIC in its sole discretion directs in unusual circumstances—its ownership or control of any such subsidiary.

Section 104(b)(2) would authorize the FHLBB to make contributions to insured savings and loan associations in distress similar to contributions authorized by law respecting insured banks.

Section 105(a) would authorize the assessment of a civil money penalty in the same manner as provided in section 101 of the bill for any violation of a provision of the Bank Holding Company Act. The amount of the penalty which may be assessed by the Federal Reserve Board under this provision is not more than $1,000 per day.

Section 105(b) authorizes the Federal Reserve to issue subpenas in connection with hearings or investigations under the Bank Holding Company Act.

Section 105(c) would provide that any company which violates or any individual who participates in a violation of any provision of section 408 of the National Housing Act or any regulation or order issued pursuant thereto, shall forfeit and pay a civil penalty of not more than $1,000 per day per violation for each day during which such violation continues. The FSLIC would have the authority to assess such a civil penalty after notice and the following of procedures identical to those applicable under section 101.

Section 106(a)(1) would authorize cease-and-desist proceedings and cease-and-desist orders to be issued under the Financial Institutions Supervisory Act directly against individuals: Any director, officer, employee, agent, or any other person participating in the conduct of the affairs of a bank, without the necessity for naming the bank in such proceeding or order.

Section 106(a)(2) would amend section 407 of the National Housing Act to expand the scope and effectiveness of cease-and-desist orders issued by the FSLIC. The amendment would make it clear that cease-and-desist proceedings could be instituted against directors, officers, employees, agents, or other persons participating in the conduct of the affairs of an insured institution, regardless of whether the in-

sured institution itself is named in the proceeding. This section and section 106(a)(3) gives the FHLBB the authority to issue cease-and-desist orders against savings and loan holding companies, their subsidiaries and affiliates and service corporations.

Section 106(a)(3) would provide the Federal Home Loan Bank Board with cease-and-desist powers, with respect to Federal savings and loan associations, similar to the powers subsection 106(a)(2) would provide to the FSLIC with respect to State-chartered insured savings and loan associations.

Section 106(a)(4) provides the NCUA with similar cease-and-desist authority over individuals as provided for in sections 106(a)(1)–(4).

Section 106(b) authorizes the extension of cease-and-desist powers under the Financial Institutions Supervisory Act to Edge Act and Agreement Corporations whether or not any such corporation is a subsidiary of a bank holding company.

Section 106(c)(1) would authorize the issuance of temporary cease-and-desist orders under the Financial Institutions Supervisory Act against individuals: Any director, officer, employee, agent, or other person participating in the conduct of the affairs of a bank, without the necessity for naming the bank in the temporary order; and adds serious weakening of a bank as a ground for issuance of such an order.

Section 106(c)(2) would conform the FSLIC's temporary cease-and-desist authority with respect to State-chartered insured institutions, with changes in subsection 106(c)(1) respecting cease-and-desist actions against individuals of banks.

Section 106(c)(3) would conform the FHLBB's temporary cease-and-desist authority, with respect to Federal savings and loan associations, with changes proposed in subsection 106(c)(1) respecting cease-and-desist actions against individuals of banks.

Section 106(c)(4) this section would conform the NCUA's temporary cease-and-desist authority over credit unions to that contained in section 106(c)(1) for banks.

Section 106(d)(1) would authorize the issuance of an order to any director, officer, or other person participating in the affairs of a bank removing any such person from office or from paticipating in any manner in the conduct of the affairs of a bank upon a showing that such individual has exhibited personal dishonesty in a transaction or has demonstrated a willful disregard for the safety or soundness of the bank.

Removal proceedings may be initiated respecting persons participating in the affairs of national banks by the Comptroller of the Currency. However, removal orders may be issued only by the Federal Reserve Board with respect to such officials of national banks. At the present time, the Comptroller may not initiate such a proceeding. The procedural and substantive aspects of such matters respecting national banks under current law are the responsibility of the Federal Reserve Board. This bill would shift the procedural aspects to the Comptroller over national banks.

Section 106(d)(2) proposes to expand the criteria for the removal of a director or officer from an insured savings and loan institution. The amendment would authorize the FSLIC to remove a director or officer of an insured savings and loan association, under the criteria set forth under subsection (d)(1) with respect to insured banks.

Section 106(d)(3) would amend the Home Owners' Loan Act of 1933, as amended to permit the FHLBB to remove a officer, or director of a Federal savings and loan association, under the criteria set forth under subsection (d)(2) applying to the FSLIC with respect to State-chartered insured institutions.

Section 106(d)(4) would authorize the removal of officials and insured credit unions to the same extent as removals are authorized for financial institutions.

Section 106(e)(1) authorizes the assessment of civil money penalties of not more than $1,000 per day per violation of any outstanding cease-and-desist order under the Financial Institutions Supervisory Act. The civil money penalties may be assessed and collected under this section in a similar manner as that under section 101 of the bill after consideration of the appropriateness of the penalty with respect to the size or financial resources of the bank or person charged.

Section 106(e)(2) would provide that any insured institution, savings and loan, or any institution the accounts of which are insured which violates, or any officer, director, employee, agent or other person participating in the conduct of the affairs of an institution who violates a cease-and-desist order which has become final, shall forfeit and pay a civil penalty of not more than $1,000 per day per violation for each day during which such violation continues. The amendment provides the FSLIC with authority to assess such a civil penalty, giving due consideration to the appropriateness of the penalty with respect to the size of financial resources of the institution or person charged in a similar manner as under section 101 of the bill.

Section 106(e)(3) would provide the FHLBB with the authority to assess a civil penalty against Federal savings and loan associations and persons similar to the authority vested in the FSLIC under subsection (e)(2).

Section 106(e)(4) would authorize the NCUA to assess civil money penalties not to exceed $1,000 for violations of its cease-and-desist orders in the same manner as is applicable to other financial institutions regulatory agencies.

Section 107 would make applicable to insured nonmember banks the requirements of section 22 of the Federal Reserve Act and would authorize civil money penalties to be assessed against insured nonmember banks to the same extent as civil money penalties may be assessed against member banks.

Section 108 makes clear that the civil money penalty provisions of S. 71 apply only to violations occurring after the date of the enactment of the bill.

Section 109 would amend section 22(g) of the Federal Reserve Act to increase the limits on loans which may be made by a member bank to its executive officers. Under this section, a member bank may make loans to executive officers of: $60,000 for the purpose of purchasing a home; $20,000 to finance the education of children; and $10,000 for any other purpose.

Section 110(a) would amend the Federal Deposit Insurance Act to require the appropriate bank regulatory agency to provide the opportunity for a hearing to an insured bank official suspended or removed

because of an indictment or conviction for a crime involving dishonesty or breach of trust which carries a penalty exceeding 1 year. In order to effectuate such a suspension or removal the appropriate agency much find that continued service or participation by the individuals may pose a threat to the interests of the bank's depositors or may threaten to impair public confidence in the bank. The individual must be notified of the grounds for the agencies action initiating and deciding the case. This section also makes it a misdemeanor to willfully fail or refuse to obey a subpena issued under the Financial Institutions Supervisory Act.

Section 110 (b), (c), and (d) would require suspensions or removals after indictment or conviction of a crime of individuals under the jurisdictions of the FHLBB and NCUA to be conducted in accordance with section 110(a).

Section 111 authorizes a bank holding company to retain shares in a bank acquired in conection with defaults on debts previously contracted for a period of 5 years and a company acquiring such shares would not be required to be registered as a bank holding company for 5 years. Section 111 also makes explicit that shares acquired by nonbanks as well as banks in nonbank companies may be held for 5 years before they are required to be divested.

Title II. Interlocking directors

Section 201 provides that title II may be cited as the "Depositary Institutions Management Interlocks Act."

Section 202 defines the terms "depositary institution," "depositary holding company," "affiliate," "management official," and "office."

Section 203 prohibits a management official of a depositary institution from serving as a management official of another depositary institution not affiliated therewith in the same SMSA as their offices are located, or, outside an SMSA, in the same or contiguous or adjacent city, town, or vilalge.

Section 204 prohibits all interlocking management relationships regardless of geographic location between a depositary institution with $1 billion in assets and a depositary institution with $500 million in assets.

Section 205 provides certain exemptions for failing institutions, Edge Act Corporations, and credit unions.

Section 206 grandfathers existing interlocking relationships for a period of 10 years.

Section 207 places the responsibility to enforce title II's proscriptions upon appropriate authorities.

Section 208 makes conforming adjustments to the existing provisions of the Clayton Act which are necessitated by the passage of title II.

Sectioin 209 provides conforming amendments to cease-and-desist legislation.

Section 210 places in the Board of Governors of the Federal Reserve System the authority to prescribe rules and regulations which would authorize interlocking management officials which are procompetitive; and to write rules to prevent evasions of title II.

Title III. Foreign branching

Section 301 would include a definition of "foreign branch" in the FDIC Act and would give the FDIC express authority over the establishment and operation of foreign branches and the acquisition of the shares of foreign banks by State nonmember insured banks similar to that exercised by the Federal Reserve with respect to foreign branches and foreign bank acquisitions of member banks.

Section 302 would amend the Federal Deposit Insurance Act to permit the signatures of two directors or trustees to attest to the correctness of a report of condition of an insured nonmember bank. The signatures of two directors or trustees are currently permitted only if the bank does not have more than three directors or trustees. Accordingly, when the FDIC receives a report of condition attested by the signatures of two directors or trustees, it often must undertake time-consuming investigations to determine the total number of directors or trustees of the insured nonmember bank.

Sections 303 and 304 would apply the procedural requirements as to subpenas to claims and insured deposits and to examinations and investigations under section 10 of the Federal Deposit Insurance Act. Section 304 would amend section 8(q) of the Federal Deposit Insurance Corporation Act (12 U.S.C. 1818(q)) to provide that where the deposit liabilities of an insured bank are assumed by another insured bank the insurance of time deposits so assumed shall continue to be separately insured to the earliest maturity more than 6 months after the effective date of the assumption. Demand and savings deposits so assumed shall continue to be separately insured for a period of 6 months after the effective date of the assumption.

Section 305 would make clear that, in connection with either an examination or some other type of investigation for compliance with applicable law, the appropriate Federal banking agency is authorized to take testimony and subpena the records of institutions. The procedural requirements as to subpenas are deleted from section 10 of the act and those of section 8(n) of the Federal Deposit Insurance Act are incorporated by reference. Section 305 would also expand the definition of "affiliate" for this purpose to include any "affiliate" as that term is used in section 23–A of the Federal Reserve Act (12 U.S.C. 371c), which in conjunction with section 18(j) of the Federal Deposit Insurance Act—12 U.S.C. 1828(j)—prohibits certain loans to affiliates of insured banks. The proposed amendment would conform the definitions of "affiliate" as used in these closely related contexts and thus conform the authority of the Corporation to examine a bank-holding company of which a nonmember insured bank is a subsidiary, as well as any other subsidiary of such company to the definitions contained in the Bank Holding Company Act.

Section 306 would amend section 18(c)(1)(B) of the Federal Deposit Insurance Act—12 U.S.C. 1828(c)(1)(B)—to make clear that the Corporation's approval is necessary in connection with the assumption by an insured bank of the deposit liabilities of a foreign noninsured bank, notwithstanding the exclusion of such liabilities

from the definition of the term "deposits" in section 3(1)(5) of that act—12 U.S.C. 1813(1)(5).

Section 307 would amend 18 U.S.C. 1114 to make it a felony to kill, or to forcibly assault, resist, oppose, impede, intimidate, or interfere with an FDIC attorney, liquidator, examiner, claim agent, or other FDIC employee as a result of the performance of his official duties. Such acts against Corporation employees arising out of their official duties are not presently Federal crimes, and the State sanctions which can be applied in these cases often differ in substance and application. The enactment of section 307 would equally proscribe such act in all States. The provisions of this section would also apply to the Comptroller of the Currency, the Federal Reserve, the FHLBB, and the NCUA.

Section 308. Bank Service Corporation Act requires federally regulated banks and persons performing certain clerical services for such banks to give written assurances that such services will be subject to Federal regulations and examination to the same extent as if they were performed by the bank itself. Section 308 would eliminate the requirement to furnish such assurances and would make the performance of such services automatically subject to Federal regulation and examination. The proposed amendment would also require every such bank to notify the appropriate Federal bank regulatory agency within 30 days of the existence of a service relationship and would apply the act to subsidiaries of the bank which are themselves subject to examination by the agency which regularly examines the bank.

Title IV. Conflicts of interest

Section 401 provides that title IV may be cited as the Depositary Institutions Conflict of Interest Act.

Section 402 prohibits the members of the Federal Deposit Insurance Corporation and the Comptroller of the Currency from taking jobs with banks or with bank holding companies of banks they regulate for 2 years upon leaving office unless they have completed their term of office.

Section 403 applies to proscriptions of section 402 to the members of the Federal Reserve Board.

Section 404 applies the proscriptions of section 402 to the members of the FHLBB.

Section 405 provides level upgradings for the Chairman and Members of the Federal Reserve, the Chairman of the FDIC, and the Chairman of the FHLBB, the Comptroller of the Currency, and the Administrator of the National Credit Union Administration.

CORDON RULE

In the opinion of the committee, it is necessary to dispense with the requirements of subsection 4 of rule XXIX of the Standing Rule of the Senate in order to expedite the business of the Senate in connection with this report.

COST OF LEGISLATION

Pursuant to Sec. 252(a)(1) of the Legislative Reorganization Act of 1970, as amended, the committee accepts as its own estimate of the cost of carrying out the legislation the following cost estimate as prepared by the Congressional Budget Office: Letters attached.

CONGRESSIONAL BUDGET OFFICE,
U.S. CONGRESS,
Washington, D.C., June 28, 1977.

HON. WILLIAM PROXMIRE,
Chairman, Committee on Banking, Housing, and Urban Affairs, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office h as prepared the attached cost estimate for S. 71, the Financial Institutions Supervisory Act Amendments of 1977.

Should the committee so desire, we would be pleased to provide further details on the attached cost estimate.

Sincerely,

ALICE M. RIVLIN, *Director.*

CONGRESSIONAL BUDGET OFFICE—COST ESTIMATE

JUNE 28, 1977.

1. Bill No. S. 71.

2. Bill title: Financial Institutions Supervisory Act Amendments of 1977.

3. Bill status: As ordered reported by the Senate Committee on Banking, Housing, and Urban Affairs, June 14, 1977.

4. Bill purpose: This proposed legislation strengthens the supervisory authority of federal agencies which regulate depository institutions. In addition, this bill proposes a change in the rate of pay for the Chairman and the Members of the Board of Governors of the Federal Reserve System, the Chairman of the Federal Deposit Insurance Corporation, the Administrator of the National Credit Union Administration, the Comptroller of the Currency, and the Chairman of the Federal Home Loan Bank Board.

5. Cost estimates:

	Thousands
Fiscal year 1978:	
Federal Reserve System (off-budget)	$41.8
Other (function 400)	21.4
Fiscal year 1979:	
Federal Reserve System (off-budget)	41.8
Other (function 400)	21.4
Fiscal year 1980:	
Federal Reserve System (off-budget)	41.8
Other (function 400)	21.4
Fiscal year 1981:	
Federal Reserve System (off-budget)	41.8
Other (function 400)	21.4
Fiscal year 1982:	
Federal Reserve System (off-budget)	41.8
Other (function 400)	21.4

6. Basis for estimate: The cost estimate for the Federal Reserve System is based upon increasing the annual salary of the Chairman from $57,500 to $66,000, and the salaries of the 6 members from $52,500 to $57,500. With the addition of an increased government contribution for retirement benefits totalling $3,310 the full cost increase would be $41,810 per year.

The cost estimate for the other 4 positions designated in this bill is based upon the salaries increasing from $52,500 to $57,500, and the

government retirement contribution increasing by $1,400 for a total of $21,400 per year.

While this bill would result in increased costs for the agencies concerned, it would not have any net budgetary impact, as salaries and expenses of these agencies are supported by fees and assessments paid by their member institutions. This estimate assumes an October 1, 1977 effective date, and no salary or retirement adjustments over the next five years.

7. Estimate comparison: None.
8. Previous CBO estimate: None.
9. Estimate prepared by: Jack Garrity (225–7760).
10. Estimate approved by:

C. G. Nuckols,
for James L. Blum,
Assistant Director for Budget Analysis.

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